UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

JAMES BELL, et al. PLAINTIFFS

v. CIVIL ACTION NO. 3:00CV-311-S

THE CITY OF LOUISVILLE, et al. DEFENDANTS

ORDER

This matter is before the court on motion of the defendants, the City of Louisville, Sergeant Denny Alfred, Officer Ron Martin, Officer Derrick Leachman, the City of Hillview, Colonel Steve Jesse, Officer Michael O'Donnell, the City of Radcliff, the Radcliff Police Department, and Officer Eugene Williams, to sever the plaintiff's claims pursuant to Fed. R. Civ. P. 20, 21.

Fed. R. Civ. P. 20(a) has two distinct requirements, both of which must be met before joinder is permissible. First, "a right to relief must be asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or occurrence, or series of transactions or occurrences[.]" *Mosley v. General Motors Corp.*, 497 F.2d 1330, 1333 (8th Cir. 1974). Second, "some question of law or fact common to all the parties must arise in the action." *Id.* Joinder of parties is favored under the federal rules and is intended to promote judicial economy and trial convenience. *See United Mine Workers of America v. Gibbs*, 383 U.S. 715, 724, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966); *State of Ohio ex rel. Fisher v. Louis Trauth Dairy, Inc.*, 856 F.Supp. 1229, 1239 (S.D. Ohio 1994). Finally, whether to allow the joinder of parties rests within the discretion of the district court. *See Mosley*, *supra*, at 1332.

The circumstances surrounding the plaintiffs' claims have not been developed to the point where severance is warranted. The factual record is bare, and until it is more fully developed, it is

in the interests of judicial economy and fairness to the parties that the claims remain a part of a single cause of action.

Motions to Sever having been made in this case by the defendants, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that the defendants' Motions to Sever are **DENIED**. However, if at a later date, the record more clearly indicates that severance of the plaintiffs' claims is appropriate, the defendants may renew their motions at that time.

This _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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MEMORANDUM OPINION

This matter is before the court for consideration of the motion of the defendants, the City of Louisville, the Louisville Police Department, Colonel Ronald Ricucci, Captain Eugene Sherrard, Lieutenant Colonel Edward Blaser, Lieutenant Harris Osoffsky, Sergeant Denny Alfred, Officer Ron Martin, and Officer Derrick Leachman (collectively, the "City of Louisville Defendants"), to dismiss the plaintiffs' Complaint.[1] For the reasons set forth below, the defendants' Motion to Dismiss will be granted.

Background

The plaintiffs[2] allege violations of 42 U.S.C.§§1983, 1985 (§§1983, 1985) by the defendants. Specifically, the plaintiffs claim that their rights, secured by the Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution, were violated under color of law when the defendants shot and, in three of the four incidents, killed the plaintiffs' pet dogs. *See* Compl. at ¶5. With regard to the City of Louisville Defendants upon whose motion this matter is before the

[1]The City of Louisville Defendants have separately moved to sever plaintiffs' claims. Because the other defendants in this cause of action have moved to sever plaintiffs' claims on similar grounds, the court will address all motions to sever in a separate order.

[2]The plaintiffs are four individuals who allege separate incidents of police misconduct by three different municipalities. *See* Compl. at ¶¶1-4.

court, the plaintiffs allege two separate shootings of dogs by members of the Louisville Police Department ("LPD"). *See generally,* Compl. at ¶¶30-35, 49-51.

The first shooting incident involved the shooting of "Sampson," a dog which belonged to one of the plaintiffs, James Bell ("Bell"). The plaintiffs allege that the defendant Officer Ron Martin ("Officer Martin") responded to a complaint that Sampson was "running loose" and had chased someone. *See* Compl. at ¶30. After arriving at Bell's home, Officer Martin allegedly shot Sampson twice, wounding the animal. *See* Compl. at ¶¶30-31. The plaintiffs contend that Officer Martin then called Sergeant Denny Alfred ("Sgt. Alfred"), another defendant, for assistance. *See* Compl. at ¶31. After arriving at the scene, Sgt. Alfred allegedly shot Sampson, this time killing it. *See id.* The plaintiffs finally allege that following the shooting, Officer Martin and Sgt. Alfred failed to provide medical treatment to the dog, took the dog away and destroyed its remains, and generally frustrated any attempts by Bell to learn more about the circumstances surrounding the shooting.[3] *See* Compl. at ¶¶32-35.

The second shooting involving the City of Louisville Defendants allegedly occurred after the defendant Officer Derrick Leachman ("Officer Leachman") observed "Santo," a dog belonging to another plaintiff, Fontello Scott ("Scott"), "disturbing a trash can." Compl. at ¶49. The plaintiffs contend that after shooting the animal, Officer Leachman followed it as it walked onto Scott's front porch. *See* Compl. at ¶50. According to the plaintiffs, Officer Leachman attempted to shoot the animal again. *See id.* However, before Officer Leachman could fire, the plaintiffs claim that "[Scott's] family members were able to take possession of Santo and obtain medical care for him."

[3]In addition to Officers Martin and Alfred, the plaintiffs claim that defendants City of Louisville, the LPD, Colonel Ronald Ricucci ("Col. Ricucci"), Captain Eugene Sherrard ("Capt. Sherrard"), Lieutenant Colonel Edward Blaser ("Lt. Col. Blaser"), and Lieutenant Harris Osoffsky ("Lt. Osoffsky") "endeavored to prevent plaintiff Bell from obtaining information about his dog and the circumstances surrounding his death." Compl. at ¶35.

Compl. at ¶50. The plaintiffs finally allege that the LPD failed to reimburse Scott for medical expenses after having promised to do so. *See* Compl. at ¶51.

The plaintiffs claim that the shootings of their pets constitute violations of several rights guaranteed by the United States Constitution. First, the plaintiffs claim that "they were deprived of a liberty and property interest without due process of law which is secured by the Fifth and Fourteenth Amendments to the Constitution of the United States." Compl. at ¶57. Second, the plaintiffs claim that the shootings were unconstitutional seizures of their personal property in violation of the Fourth Amendment. *See* Compl. at ¶58. Finally, the plaintiffs claim that the defendants violated the Eighth Amendment by acting "with deliberate indifference" to the medical needs of the plaintiffs' pets following each shooting. Compl. at ¶60. The City of Louisville Defendants raise several arguments in their motion, each of which will be addressed below.

Standard of Review

When considering a motion to dismiss, a court must determine whether a reasonable jury could find for the plaintiff under any set of facts. *Cheatham v. Paisano Publications, Inc.*, 891 F. Supp. 381, 384 (W.D. Ky. 1995). In making this determination, the court will construe the complaint in the light most favorable to the plaintiff. *Columbia Natural Resources, Inc. v. Tatum*, 58 F. 3d 1101, 1109 (6th Cir. 1995), *cert. denied*, 516 U.S. 1158, 116 S.Ct. 1041, 134 L.Ed.2d 189 (1996). Only when it appears beyond doubt that the plaintiff would be unable to recover under any set of facts that could be presented consistent with the allegations of the complaint will such a motion be granted. *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957).

Discussion

A. Statute of Limitations

The limitations period applicable to §1983 actions is the general statute of limitations applicable to personal injury actions of the state in which the deprivation allegedly occurred. *See Wilson v. Garcia*, 471 U.S. 261, 271, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985); *Owens v. Okure*, 488

U.S. 235, 249-50, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). When a §1983 claim arises in Kentucky, therefore, the applicable limitations period is one year. *See* Ky. Rev. Stat. Ann. §413.140(1)(a) (Michie 1992); *Collard v. Kentucky Board of Nursing*, 896 F.2d 179, 181-82 (6th Cir. 1990). It is equally clear that whether a limitations period is subject to tolling is an issue of state law. *Board of Regents v. Tomanio*, 446 U.S. 478, 486, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980). KRS §413.190(2)[4] requires the tolling of the statute of limitations only when "the conduct of the defendant amounts to an absconding or concealment or obstructs the prosecution of the action . . .." *Hackworth v. Hart*, 474 S.W.2d 377, 380 (Ky. 1971). In *Adams v. Ison*, 249 S.W.2d 791 (Ky. 1952), the court explained the sort of obstruction which would toll a limitations period:

> The usual application is in a case where an injured employee was promised payment of expenses and for time lost or permanent employment or a satisfactory settlement *if he would not sue*. . . . [T]he representation, or act, intentional or otherwise, must have been calculated to mislead or deceive *and to induce inaction by the injured party*.

Id. at 792-93 (citations omitted) (emphasis added).

Here, the plaintiffs filed their Complaint on June 2, 2000. The shooting of the plaintiff Scott's pet occurred more than one year prior to that date.[5] The plaintiffs allege that the LPD promised to reimburse Scott for the medical expenses she incurred in caring for her wounded pet. *See* Compl. at ¶51. Assuming, as we must on a motion to dismiss, that this representation was made

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[4]KRS §413.190 provides:

> (2) When a cause of action mentioned in KRS 413.090 to 413.160 accrues against a resident of this state, and he by absconding or concealing himself or by any other indirect means obstructs the prosecution of the action, the time of the continuance of the absence from the state or the obstruction shall not be computed as any part of the period within which the action shall be commenced. But this saving shall not prevent the limitation from operating in favor of any other person not so acting, whether he is a necessary party to the action or not.

[5]The plaintiffs are apparently unsure whether the shooting occurred in July of 1997 or in July of 1998. *See* Compl. at ¶¶4, 49. In either case, the latest date on which the plaintiffs could have filed their suit without relying on a tolling argument was in July of 1999, nearly a year before the plaintiffs actually filed suit.

by the LPD to Scott, we must determine whether such a promise is sufficient to constitute an "obstruction" within the meaning of KRS §413.190(2).

In order for KRS §413.190(2) to toll the statute of limitations, the promise made by the LPD must have been in exchange for the plaintiff's promise not to sue. Even if the LPD promised to pay for Santo's medical expenses, the plaintiffs do not contend that the promise was made in exchange for Scott's promise not to bring suit. As the Supreme Court of Kentucky stated in *Davis v. All Care Medical, Inc.*, 986 S.W.2d 902 (Ky. 1999), "[m]ere statements by a defendant that it would fix the problem does not rise to the level of the statute." *Id.* at 906 (citing *Cuppy v. General Acc. Fire & Life Assur. Corp.*, 378 S.W.2d 629 (Ky. 1964). The LPD's promise to pay for the wounded dog's medical expenses was, even in the light most favorable to the plaintiffs, at most a promise to "fix the problem." *Id.* Without any additional relevant allegations, the plaintiffs' Complaint fails to sufficiently allege conduct on the part of the LPD to survive defendants' Motion to Dismiss.[6] Therefore, the City of Louisville Defendants' motion with regard to the plaintiffs' claims arising out of the shooting of the plaintiff Scott's pet will be granted.

B. Claims Against the Individual Defendants in their Official Capacities

Claims brought against a government official in his or her official capacity are construed by courts as claims against the governmental entity on whose behalf he or she acted. *See Hafer v. Menlo*, 502 U.S. 21, 25, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991). However, claims brought against the same government official in his or her individual capacity "seek to impose individual liability . . . for actions taken under color of state law." *Id.*

[6]Even if the LPD's conduct was found to be sufficient to toll the statute of limitations with respect to the animal's medical expenses, the plaintiffs do not allege that the LPD made any other representations regarding the plaintiffs' potential claims against them. Therefore, only the plaintiffs' claim seeking reimbursement for the dog's medical expenses would remain viable.

In this case, the plaintiffs have sued several of the City of Louisville Defendants both in their official and individual capacities.[7] The plaintiffs have also sued the City of Louisville, the entity on whose behalf the individuals acted. Because the individual defendants are named in both their official and individual capacities[8], and because the City of Louisville is a named defendant, dismissal of the plaintiffs' claims against the individual defendants in their official capacities will limit only the source from which relief may come, not the amount of relief potentially available. *See Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). Therefore, the claims brought against Officers Martin and Leachman, Sgt. Alfred, Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard in their official capacities will be dismissed.

C. Col. Ricucci

In *Wells v. Brown*, 891 F.2d 591 (6th Cir. 1989), the court held that claims against government officials in their individual capacities must be set forth clearly in the appropriate pleadings. *See id.* at 592. This pleading standard for §1983 actions ensures that government officials receive "sufficient notice of the fact that they could be held personally liable for the payment of any damage award obtained by the plaintiff." *Pelfrey v. Chambers*, 43 F.3d 1034, 1038 (6th Cir. 1995) (citing *Wells*, *supra*, at 593-94). Consistent with the rationale of *Wills*, the *Pelfrey* court held that the individual defendants were given sufficient notice that they were being sued in their official capacity. *Pelfrey* at 1038. While the complaint failed to designate the capacity in which the individuals were sued, a subsequent motion filed by the plaintiff claiming that the individuals acted outside the scope of their employment was sufficient to put those individuals on notice that they were being sued in their individual capacities. *See id.*

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[7]Those defendants sued in their individual capacity include Officers Martin and Leachman, Sgt. Alfred, Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard.

[8]Col. Ricucci, however, is named only in his official capacity, the consequence of which is discussed below.

The plaintiffs' Complaint names Col. Ricucci as a defendant. *See* Compl. However, the Complaint fails to designate the capacity in which Col. Ricucci is sued. Aside from a description of Col. Ricucci's position and duties as Safety Director for the City of Louisville, the plaintiffs' Complaint refers only once to Col. Ricucci as having "endeavored to prevent Plaintiff Bell from obtaining information about his dog and the circumstances surrounding his death." *See* Compl. at ¶¶16, 35. This "passing reference" to Col. Ricucci's involvement in the events surrounding the shooting of the plaintiff Bell's pet is similar to that held to be insufficient to satisfy the §1983 pleading standard by the *Wells* court. *See Wells*, *supra*, at 593. Also, unlike *Pelfrey*, the plaintiffs' Complaint specifically alleges that the individual defendants acted within the scope of their employment when they violated §1983. *See* Compl. at ¶56. Therefore, consistent with *Wills* and *Pelfrey*, the plaintiffs' claim against Col. Ricucci will be dismissed.

D. Supervisor Liability under §1983

The claims brought against Lt. Osoffsky, Lt. Col. Blaser, Capt. Sherrard, and Col. Ricucci appear to be based solely on their roles as supervisors, not as direct participants in either of the shootings.[9] *See* Compl. at ¶¶16-18, 35, 56. As discussed above, the plaintiffs' claims against Col. Ricucci will be dismissed. The plaintiffs claims against Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard in their official capacities will also be dismissed on similar grounds. Therefore, with regard to this group of defendants, we must address the claims against Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard in their individual capacities.

When a plaintiff seeks to establish liability under §1983 based on a government official's role as a supervisor, he or she must show "that the official either encouraged the specific incident

[9]In their reply, the defendants "acknowledge that Plaintiffs have alleged that Defendant Osoffsky participated in the alleged action against Plaintiff Bell's dog, Sampson, by firing a shot." *Id.* at 5 n.3. However, the defendants mistakenly assign Sgt. Alfred's alleged role to Lt. Osoffsky. *See* Compl. at ¶31. Our review of the plaintiffs' Complaint does not disclose any alleged direct participation on the part of Lt. Osoffsky. Therefore, the plaintiffs' claim against Lt. Osoffsky will be analyzed solely as one based on his supervisory capacity.

of misconduct or in some other way directly participated in it." *Hays v. Jefferson County, Ky.*, 668 F.2d 869, 874 (6th Cir. 1982). A §1983 plaintiff may not base his or her claim solely on the right to control employees "without any control or direction having been exercised and without any failure to supervise . . .." *Monell v. Dept. of Social Services*, 436 U.S. 658, 694 n.58, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978) (citing *Rizzo v. Goode*, 423 U.S. 362, 370-71, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976)).

Here, the plaintiffs have failed to sufficiently allege that Lt. Osoffsky, Lt. Col. Blaser, or Capt. Sherrard "directly participated" in the shootings which form the basis for their Complaint. Aside from a general description of their position and duties, Lt. Osoffsky and Lt. Col. Blaser are never specifically referred to in the body of the plaintiffs' Complaint. *See* Compl. at ¶18. The only reference to Capt. Sherrard merely alleges that correspondence sent to him was "ignored." *See* Compl. at ¶35. In fact, the plaintiffs' only mention of their claims against these defendants based on their supervisory roles fails to allege the causal link required by *Monell*, *Rizzo*, and *Hays*:

> In each of these cases, the Defendant Officers, their supervisors and the political entities for which they are employed either failed and refused to properly train officers to handle common situations such as these without killing/injuring citizens pets or perpetuated the killing spree by tolerating same, failing to discipline for such behavior or justifying same as an appropriate and legitimate use of force.

Compl. at ¶55.

These conclusory allegations are insufficient to form the basis of a claim against Col. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard. They fail to allege that those defendants "actively participated in or authorized" the actions taken by Officers Leachman and Martin and Sgt. Alfred. *Bellamy v. Bradley*, 729 F.2d 416, 421 (6th Cir. 1984). As a result, the plaintiffs' claims against Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard in their individual capacities will be dismissed.

E. Louisville Police Department

The LPD is an entity that is incapable of being sued. *See Matthews v. Jones*, 35 F.3d 1046, 1049 (6th Cir. 1994) (citations omitted). The City of Louisville, as the governmental entity of which

the LPD is an instrument, would be liable for the plaintiffs' alleged injuries if those injuries were caused by an unconstitutional policy or custom on the part of the City. *See id.* (citing *Monell v. Department of Social Services*, 436 U.S. 658 (1978)). Therefore, the plaintiffs' claims against the LPD will be dismissed.

F. Plaintiffs' §1985 Claim

In order to state a claim upon which relief can be granted under 42 U.S.C. §1985(3) ("§1985(3)")[10], a plaintiff must allege, among other things, "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *Griffin v. Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971). The plaintiffs have failed to allege such an "animus" on the part of any of the defendants in either their Complaint or their Response to the defendants' motion. Having failed to allege sufficient facts upon which a jury could reasonably find the presence of a "discriminatory animus," the plaintiffs' §1985 claim will be dismissed.

G. Plaintiffs' §1983 Claim

To state a claim under §1983, a plaintiff must allege that the defendant acted under color of state law and that he or she deprived the plaintiff of either a federal constitutional right or a federal statutory right. *See United of Omaha Life Ins. Co. v. Solomon*, 960 F.2d 31, 33 (6th Cir. 1992) (citing *Gomez v. Toledo*, 446 U.S. 635, 640, 100 S.Ct. 1920, 64 L.Ed.2d 572 (1980)). Here, the defendants

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[10]While the plaintiffs do not specify the subsection of §1985 upon which they base their claim, it is clear from the pleadings that they allege that the defendants violated §1985(3). *See* Pls.' Resp. at 4-5. §1985(3) states in relevant part:

> If two or more persons in any State or Territory conspire . . . for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws . . ., [and] if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property . . ., [then] the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

argue that the plaintiffs have, at least in part, failed to allege the deprivation of a federal constitutional right.[11]

1. Eighth Amendment

Eighth Amendment[12] protections extend only to those individuals who have been convicted of crimes. *See Ingraham v. Wright*, 430 U.S. 651, 667-68, 97 S.Ct. 1401, 51 L.Ed.2d 711 (1977). The plaintiffs' Complaint does not allege that the police officers who shot the plaintiffs' pets did so because the plaintiffs had been convicted of a crime. Therefore, the plaintiffs' §1983 claim based on the defendants' violation of the Eighth Amendment will be dismissed.

2. Fifth Amendment

The Due Process Clause of the Fifth Amendment proscribes certain conduct by the federal government, whereas the Due Process Clause of the Fourteenth Amendment proscribes similar conduct by states and their instrumentalities.[13] *See Scott v. Clay County, Tenn.*, 205 F.3d 867, 873 n.8 (6th Cir. 2000).Therefore, the plaintiffs' claims alleging a violation of the Fifth Amendment are "redundant" given their Fourteenth Amendment claims. *Id.*

3. Fourteenth Amendment

The plaintiffs finally claim that the defendants deprived them of their personal property without due process of law by shooting their pets. *See* Compl. at ¶¶57, 59, 60. The defendants, on the other hand, argue that the plaintiffs' claims are essentially Fourth Amendment seizure of

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[11]The defendants do not seek dismissal of that part of the plaintiffs' §1983 claim which is based on a violation of the Fourth Amendment. *See* Defs.' Mot. to Dismiss at 10; Defs.' Reply at 7. Therefore, we will discuss only the defendants' alleged violations of the Fifth, Eighth, and Fourteenth Amendments.

[12]The Eighth Amendment states, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII.

[13]The Fifth Amendment states in relevant part that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law [.]" U.S. Const. amend. V. The Fourteenth Amendment states in relevant part that "[n]o state shall . . . deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1.

property claims which should be analyzed under that Amendment's reasonableness standard and not under the Fourteenth Amendment. Both the plaintiffs and the defendants rely on the Supreme Court's holding in *Soldal v. Cook County, Ill.*, 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992), to support their respective arguments. Our reading of that decision, as well as other Supreme Court decisions both prior to and after *Soldal*, is consistent with the defendants' position.

In *Graham v. Connor*, 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989), the Supreme Court stated that where "the Fourth Amendment provides an explicit textual source of constitutional protection against . . . physically intrusive governmental conduct, that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims." *Id.* at 395. While the Court limited its holding in *Graham* to "claims that law enforcement officers have used excessive force–deadly or not–in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen," courts have since expanded the *Graham* rationale to other situations involving the Fourth Amendment. *Id. See, e.g., Albright v. Oliver*, 510 U.S. 266, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994) (arrest); *Armendariz v. Penman*, 75 F.3d 1311 (9th Cir. 1996) (alleged "overenforcement" of housing codes); *Kernats v. O'Sullivan*, 35 F.3d 1171 (7th Cir. 1994) (seizure of property); *Tinney v. Shores*, 77 F.3d 378 (11th Cir. 1996) (seizure of mobile home); *Miller v. City of Columbus*, 920 F.Supp. 807 (E.D. Ohio 1996) (theft of property allegedly caused by police officers' conduct).

The Court declined to apply the *Graham* rationale in *Soldal v. Cook County, Ill.*, 506 U.S. 56 (1992). In *Soldal*, the owners of a mobile home brought a §1983 suit against the Cook County Sheriff's Department and the owner of a trailer park from which the mobile home had been wrongfully removed by force. *See id.* at 59. Claiming that several Deputy Sheriffs assisted in the wrongful eviction, the owners based their §1983 action on the Fourth and Fourteenth Amendments. *See Soldal* at 59. The Seventh Circuit granted the defendants' motion for summary judgment with regard to the owners' Fourth Amendment claim, finding that "the [owners'] claim was more akin

to a challenge against the deprivation of property without due process of law than against an unreasonable seizure . . .." *Id.* at 70. Reversing the lower court, the Supreme Court stated:

> But we see no basis for doling out constitutional protections in such fashion. Certain wrongs affect more than a single right and, accordingly, can implicate more than one of the Constitution's commands. Where such multiple violations are alleged, we are not in the habit of identifying as a preliminary matter the claim's "dominant" character. Rather we examine each constitutional provision in turn.

Id. (citations omitted).

The Court went on to distinguish its holding in *Graham*:

> [*Graham*]'s holding was that claims of excessive use of force should be analyzed under the Fourth Amendment's reasonableness standard, rather than the Fourteenth Amendment's substantive due process test. We were guided by the fact that, in that case, both provisions targeted the same sort of governmental conduct and, as a result, we chose the more "explicit textual source of constitutional protection" over the "more generalized notion of 'substantive due process.'"

Id. (citing *Graham*, *supra*, at 394-95).

The above indicates that where two Constitutional provisions "target the same sort of governmental conduct," a §1983 claim alleging the violation of both provisions will be analyzed under the provision which provides "the more 'explicit textual source of constitutional protection[.]'" *Graham* at 394-95. *See also Albright v. Oliver*, 510 U.S. at 275. However, where multiple Constitutional provisions are alleged to have been violated by different aspects of a defendant's conduct, a court may not choose to analyze the plaintiff's §1983 claim solely under the provision which it believes predominates the plaintiff's claim. *See Soldal*, *supra*, at 70. Instead, it must analyze the plaintiff's claim under all relevant standards.

The alleged shootings of the plaintiffs' pets by the defendants form the basis of the plaintiffs' §1983 claim in the case at bar. The plaintiffs claim that by shooting the animals, the defendants both unreasonably seized their property in violation of the Fourth Amendment and deprived them of their property without due process of law in violation of the Fourteenth Amendment. These Constitutional provisions target the same governmental conduct, i.e., the shootings. Facts such as

those that were before the Court in *Soldal* are not present here. In *Soldal*, the plaintiff's complaint arose out of two separate aspects of the defendants' actions. First, the mobile home owners claimed that the Deputy Sheriffs assisted in physically removing their mobile home from the trailer park in violation of the Fourth Amendment. *See Soldal*, *supra*, at 72. Second, the owners claimed that because the seizure of the mobile home was illegal under Illinois law, the Deputy Sheriffs also deprived them of their property without due process of law. *See id.* at 58-60. These two aspects of the defendants' conduct gave rise to a §1983 claim based on two different Constitutional provisions. Here, the only aspect of the defendants' conduct that has been challenged is their conduct surrounding the actual shootings, or seizures, of the animals. *See* Compl. at ¶55. In light of the above precedent and the facts before us, we believe the Fourth Amendment provides the correct analytical basis under which to review the plaintiffs' §1983 claim. Therefore, that portion of the plaintiffs' §1983 claim based on the Fourteenth Amendment will be dismissed.

H. Equitable Relief

To invoke the jurisdiction of the federal courts, a plaintiff must adequately allege the existence of a case or controversy. *See, e.g., Flast v. Cohen*, 392 U.S. 83, 94-95, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968). When seeking equitable relief, a plaintiff may satisfy this requirement by alleging that he or she "'has sustained or is immediately in danger of sustaining some direct injury' as the result of the challenged official conduct and the injury or threat of injury must be both 'real and immediate,' not 'conjectural' or 'hypothetical.'"*City of Los Angeles v. Lyons*, 461 U.S. 95, 101-102, 103 S.Ct. 1660, 75 L.Ed.2d 675 (citations omitted). The Court rationalized its holding by stating:

> Absent a sufficient likelihood that he will again be wronged in a similar way, [the plaintiff] is no more entitled to an injunction than any other citizen of Los Angeles; and a federal court may not entertain a claim by any or all citizens who no more than assert that certain practices of law enforcement officers are unconstitutional.

Id. at 111 (citations omitted).

The plaintiffs seek equitable relief to redress the defendants' alleged Constitutional violations. However, the plaintiffs fail to allege that there is a "substantial likelihood" that animals owned by them will again be shot without justification by members of the LPD. Therefore, in light of the "speculative nature" of the basis for the equitable relief sought by the plaintiffs, their claims for declaratory and injunctive relief will be dismissed. *See Lyons* at 109.

I. Punitive Damages

The plaintiffs seek punitive damages in their Complaint. However, in response to the defendants' motion, the plaintiffs acknowledge "the inability to seek punitive damages against the City of Louisville or its officers in their official capacity." Pls.' Resp. at 7. Therefore, the plaintiffs' claims, to the extent they seek punitive damages against the City of Louisville or its officers in their official capacity, will be dismissed.

Conclusion

For the reasons set forth above, the defendants' Motion to Dismiss will be granted with regard to: (1) the plaintiffs' claims arising out of the shooting allegedly involving Officer Leachman; (2) the plaintiffs' claims against the individual defendants in their official capacities; (3) all claims brought by the plaintiffs against Col. Ricucci; (4) the plaintiffs' claims against Lt. Osoffsky, Lt. Col. Blaser, and Capt. Sherrard in their individual capacities; (5) the plaintiffs' claims against the LPD; (6) the plaintiffs' claims brought pursuant to 42 U.S.C. §1985; (7) the plaintiffs' claims brought pursuant to 42 U.S.C. §1983 to the extent they are based on alleged violations of the Fifth, the Eighth, and the Fourteenth Amendments, (8) the plaintiffs' prayer for equitable relief, and (9) the plaintiffs' prayer for punitive damages to the extent they are sought from the City of Louisville or its officers in their official capacities. A separate order will be entered this date in accordance with this opinion.

IT IS SO ORDERED this _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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THE CITY OF LOUISVILLE, et al. DEFENDANTS

ORDER

Motion having been made by the defendants, the City of Louisville, the Louisville Police Department, Colonel Ronald Ricucci, Captain Eugene Sherrard, Lieutenant Colonel Edward Blaser, Lieutenant Harris Osoffsky, Sergeant Denny Alfred, Officer Ron Martin, and Officer Derrick Leachman, and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that:

1. All claims arising out of the shooting allegedly involving Officer Leachman are **DISMISSED**;

2. All claims against defendants Louisville Police Department, Col. Ricucci, Capt. Sherrard, Lt. Col. Blaser, Lt. Osoffsky are **DISMISSED**;

2. The plaintiffs' claims against Sgt. Alfred, Officer Martin, and Officer Leachman in their official capacities are **DISMISSED**;

3. The plaintiffs' claims brought pursuant to 42 U.S.C. §1985 are **DISMISSED**;

4. The plaintiffs' claims brought pursuant to 42 U.S.C. §1983, to the extent that they are based on the defendants' alleged violations of the Fifth, Eighth, and Fourteenth Amendments, are **DISMISSED**;

5. The plaintiffs' prayer for declaratory and injunctive relief is **DISMISSED**; and

6. The plaintiffs' request for punitive damages, to the extent they are sought from the City of Louisville or its officers in their official capacities, is **DISMISSED**.

This _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record